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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/492,811	01/28/2000	John W. Becker	7436.100A	1405

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EXAMINER

DESAI, HEMANT

ART UNIT	PAPER NUMBER
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3721

24

DATE MAILED: 07/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/492,811

Applicant(s)

BECKER ET AL.

Examiner

Hemant M Desai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-20, 22-26 and 28-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section n 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13-20 and 22-26, 28-52, 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al. (4413464) in view of Aghassipour (5595320).

Larsson et al. discloses an inner container (fig. 3), designed to be removably inserted into an outer container (9, fig. 5) comprising a bottom (8, fig. 3), collapsible (clearly inherent since material of inner container being flexible, see col. 3, lines 24-25) opposing first and second side walls and front and back walls (fig. 3), each constructed of a flexible material (see col. 3, lines 24-25), the first and second side walls and the front and back walls forming an integral moisture proof seal with the bottom and each other, an integral foldable side, front and back flaps (fig. 3 and fig. 9, the portion of side and back walls which folds over the content) extending above the side walls, front wall and back wall, comprising a top edge that is substantially straight along its entire length (see fig. 3).

Regarding claim 17, Larsson et al. disclose that front and back walls (see fig. 1) each have a gusseted reinforcement.

Regarding claims 18-19, the top has a means for sealing the top (see fig. 7)

Regarding claims 20,22 and 30, Larsson et al. disclose that the front flap is connected to the edges of both the first and second side flaps and they are integral (see fig. 3).

Regarding claims 23-24, Larsson et al. disclose that the top is formed with the front and back flaps folded (see figs. 9 and 10).

Regarding claims 25, 31 and 39, Larsson et al. disclose that the bottom is substantially flat.

Regarding claims 26, 28-29, 35, all flaps are substantially the same height and are connected.

Regarding claims 41, 42, 45, wherein the height of walls and the flaps is adjustable, since after filling the content in the inner container at desirable height the top can be folded over the content (see figs. 9 and 10).

Regarding claims 32-33, 34, 36 and 40, since the inner container is collapsible it is an inherent design feature that side walls are perpendicular to the bottom in the open position and parallel to the bottom in the folded position and the side walls in the folded position have a length and width that is no greater than the bottom.

Regarding claim 44, the flap is movable from an open position extends above the outer container (see fig. 6) to second position wherein it completely closes the inner container and is contained entirely within the outer container.

Regarding claim 46-49, the modified inner container is in direct contact with the outer container, therefore the metalized bottom and the side and front and back walls are in direct contact with the outer container.

Regarding claims 50 and 51, the metalized surface is not located in airtight pouch and not movable independent from the front and sidewalls.

Larsson et al., as mentioned above, disclosed all the limitations, except for an insulating material having a metalized surface and flexible bubble pack material. However, Aghassipour teaches an insulating material having a metalized surface (15, fig. 1a-1b) extending throughout the wall and flexible bubble pack material (14, fig. 1a-1b) to keep cold contents cold for substantially long periods of time (see col. 1, lines 45-65). Therefore it would have been obvious to one having ordinary skill in the art at time of invention to provide an insulating material in the container of Larsson having a metalized surface extending throughout the wall and flexible bubble pack material as taught by Aghassipour to keep cold contents cold for substantially long periods of time.

3. Alternatively, Claims 33-34 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al. and Aghassipour and further in view of McCord (728749).

This rejection is made to further show the well-known use of collapsible container in the packaging art. The modified container of Larsson et al., as mentioned above, shows the side walls are movable from a first open position substantially perpendicular to the bottom to a second folded position substantially parallel to the bottom.

However, McCord teaches a collapsible container (A, figs. 1-5) having collapsible side walls (A3, figs. 1-3) and the top edge that is substantially straight along its entire length (see figs. 1-3) to provide a strong box and at the same time one which can be readily folded whenever desired (see lines 75-79). Regarding claims 32-33, 36 and 40,

McCord teaches that side walls are perpendicular to the bottom in the open position and parallel to the bottom in the folded position (see figs. 2 and 5) and the side walls in the folded position have a length and width that is no greater than the bottom (see fig. 5). Therefore it would have been obvious to one having ordinary skill in the art at time of invention to provide a collapsible side walls box structure as taught by McCord in the modified inner container of Larsson et al. to provide a stronger box and at the same time one which can be readily folded whenever desired.

3. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al. (4413464) in view of Aghassipour (5595320), and further in view of Becker (4929094) or Shea (5314087).

The modified container of Larsson et al., as mentioned above, disclosed all the limitations, except for the inner container is not adhered to the outer container when it is inserted therein. However, both Becker and Shea teach to insert the inner container into outer container without adhering for convenience to remove the inner container from the outer container. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the inner container without adhering to the outer container when it is inserted therein as taught by Becker and Shea in the modified container of Larson for convenience to remove the inner container from the outer container.

#### ***Response to Arguments***

4. Applicant's arguments filed 6/24/2003 have been fully considered but they are not persuasive. Applicant's argument regarding the adjustability of the height of inner

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container note that Larsson et al. sidewalls and flaps are flexible and therefore they are adjustable. Regarding the term "removably inserted" in claims 13, 34, 37, 42, 43, 52, 54 and 55, does not define any claimed structure in these claim and being disclosed by the modified container of Larsson et al. ('464). Further, in the broadest term Larsson's inner container can be removed from the outer container by tearing the inner container from the outer container.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3576.

Hemant M Desai  
Examiner  
Art Unit 3721

HMD  
July 14, 2003

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal flourish extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700